IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4631 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANSILAL NAGAJI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance: MR HR PRAJAPATI for the Petitioner.
MR MR PRAJAPATI for Petitioner No. 1
Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 11.2.2004, by which he is detained as a 'bootlegger' under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenu is also served with the grounds of detention.

In the grounds of detention, there is a reference about solitary criminal case, which is registered under the Bombay Prohibition Act.

The Authority, after considering the said case, and after considering the statements of two witnesses, whose names have not been disclosed to the petitioner, has detained him under PASA. It is the aforesaid order, which is impugned in this petition.

The learned Advocate for the petitioner submitted that there is only a solitary case and, therefore, it cannot be said that the petitioner is a habitual offender or that he has disturbed public order. He also further submitted that since this is the solitary incident, the petitioner should not have been detained under PASA.

The learned Advocate for the petitioner submitted that the order of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. He further submitted that a mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. He submitted that, as such, the activity of the petitioner can be said to be a case of violation of law and order. He also submitted that there is no credible material on record for withholding names of witnesses. The detention, according to the learned Advocate for the petitioner, therefore, stands vitiated for want of proper exercise of powers under Sec.9(2) of the PASA and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses.

To substantiate the above say, the learned Advocate for the petitioner, has relied upon the decision of this Court in Kishor Naginbhai Parmar v. State of Gujarat & Ors., 2000 (4) GLR 3236, wherein this Court (Coram : A.L. Dave, J.), held as under :-

" ... ...

14. In this view of the matter, the order of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. A mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of

proper exercise of powers under Sec.9(2) of the PASA Act and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses. The order of detention, therefore, deserves to be quashed and set aside by allowing this petition.

... ..."

Considering the record of the case, it cannot be said that the authority has tried to verify the antecedents of the witnesses. Further, considering the fact that there is only one solitary registered case, which can be taken care of under the ordinary criminal law, as well as considering the fact that the averments made in the petition are not denied by filing any affidavit-in-reply, this petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless the detenu is required in connection with any other case. The Rule is made absolute accordingly.

At this stage, the learned Advocate for the petitioner submitted that the petitioner will not enter Ahmedabad upto 31st October, 2004, except for cooperating with the Police Authority in connection with the aforesaid criminal case. This voluntary statement is recorded so that the petitioner may not be allowed to enter Ahmedabad till 31.10.2004. It is for the authority to monitor the same.

(P.B. Majmudar, J.)

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(apj)